

Impact Of Covid-19 On Insolvency Law In Asia: A Comparative Study

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Abstract

Scholars Agree On The Importance Of Implementation Of The Covid-19 Act 2020 All Over The World During Pandemic Covid-19. The Pandemic Covid-19 Disrupted Insolvency Law In Malaysia As Well As In Other Countries Such Are Singapore And Australia. This Article Examines The Benefit Of Implementation Of Insolvency (Amendment) Act 2020 And Covid 19 Act 2020 In Malaysia. This Article Also Important To Analyse The Insolvency Law Between Malaysia, Singapore And Australia Due To Pandemic Covid-19. The Government Of Various Countries Have Adopted Unprecedented Measure And Amending Their Insolvency Legislation To Prevent Covid-19. The Malaysia Department Of Insolvency Statistical Releases Show Total Bankruptcy Cases As At December 2018 Were 303,415. The Comparative Study Of Insolvency Law Between Malaysia, Singapore And Australia Is Importance To Reveal The Significance Of The Implementation Of Covid 19 Act 2020 During Pandemic Covid-19. Thus, This Study Seeks To Highlight The Impact Of Covid-19 On Insolvency Law In Malaysia As Well As In Other Countries Namely Singapore And Australia.

Keywords : Covid-19, Covid-19 Act, Amendment, Insolvency Law, Comparative Study

1. INTRODUCTION

The Covid-19 Defines As Illness Caused By Coronavirus Which Was Identified In Wuhan City, Hubei Province, China.¹The Malaysian Government Has Announced The Movement Control Order From 18 March 2020 Until 31 August 2020. It Is Extended Until 31 December 2020. The Legal Measure Instituted By The Government Of Malaysia As A Response To The Current Pandemic Are Encapsulated In Covid-19 (Temporary Measures) Act 2020 ("Covid-19 Act"). Part Vii Of The Covid-19 Act Highlights The Modifications To The Insolvency Act

¹ <https://www.medscape.com/answers/2500114-197401/what-is-covid-19>> accessed 29 December 2020

1967. The Insolvency (Amendment) Act 2020 Which Comes Into Force On 22 October 2020 Has Increased Minimum Debt Threshold Value For Bankruptcy Petition From Rm50,000.00 To Rm100,000.00. It Is Undeniable That The Amendment Of Insolvency Act 2020 Is Important To Avoid Massive Increase In Bankruptcy Cases.²

2. METHODOLOGY

The Methodology Adopted Is Doctrinal Legal Analysis. A Few Data For This Paper Are Obtained From The Primary And Secondary Legal Sources. The Primary Legal Sources Are Obtained From Federal Gazette, Statutes, Cases And High Court Of Malaysia. The Secondary Legal Sources Are Obtained From Legal Dictionaries, Law Reviews, Journals, Nutshell, Review Other Social Science Journals And Electronic References. A Few Data Also Obtained Through Telephonic Qualitative Research Interviews Between The Researcher And The Legal Officers From The Court In Peninsular Malaysia As Well As In Sabah And Sarawak.³

3. THE LEGAL MEASURES ON RESPONSE TO COVID-19

Malaysia

The Legal Measures Instituted By The Government Of Malaysia As A Response To The Current Pandemic Is Encapsulated In The Temporary Measure For Reducing The Impact Of Coronavirus Disease 2019 (Covid-19) Act 2020 [Act 829] (The 'Covid-19 Act'). The Covid-19 Act 2020 Comes Into Force On 23 October 2020, It Received Royal Assent And Now Fully Effective.⁴ It Shall Continue To Remain In Operation For A Period Of Two Years From The Date Of Its Publication.⁵

The Covid-19 Act Provides Temporary Relief For Financially Distressed Individuals, Firms And Other Businesses By Introducing Modifications To, Amongst Others, The Insolvency Act 1967. Part Vii Of The Covid-19 Act 2020 Increases Minimum Threshold For The Presentation Of A Bankruptcy Petition By The Creditor Against A Debtor From Rm50,000.00 To Rm100,00.00.⁶ This Part Of Act Will Remain In Operation Until 31 August 2021.⁷ Thus, The Monetary Thresholds As Provided Under The Insolvency Act 1967 Apply Instead To Or In Relation To Bankruptcy Applications Made After 31 August 2021. The Minister May Extend The Operation Of This Part By Order Published In The Gazette. However, The Extension Shall Not Exceed The Period Of Operation Of This Act There Is 2 Years Period.

The Bankruptcy Law In Malaysia Is Governed By The Insolvency Act 1967. It Derives From The English Bankruptcy Act Of 1914.⁸ The Insolvency Act Came Into Force, Known As The Bankruptcy Act, Throughout Malaysia On 30 September 1967. The Change Of Name Is Effected By The Amendment Vide Bankruptcy

² Rehah Ismail and Syuhaeda Aeni Mat Ali, Covid-19 Pandemic in Malaysia: A Silver Lining of Insolvency (Amendment) Act 2020, 1st Bandung International Virtual Conference on Law (BICL): Law and Globalization, 2-3 December 2020, Faculty of Law, University of Padjadjaran Bandung, Indonesia. This paper was presented on 2 December 2020 through virtual zoom.

³ Farooq, M.B. & De Villiers, C.2017. Telephonic Qualitative Research Interviews, when to consider them and how to do them, *Meditari Accountancy Research*, 25(2), 291-316, accessed 29 December 2020

⁴ <https://www.conventuslaw.com/report/malaysia-the-temporary-measures-for-reducing-the/> accessed 30 December 2020>

⁵ Section 19(1) of The Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 [ACT 829], www.federalgazette.agc.gov.my, accessed 29 December 2020.

⁶ Section 20 of the COVID-19 Act 2020

⁷ Section 19(1) of the COVID-19 Act 2020

⁸ Leong Wai Hong, "A brief Outline On Malaysian Bankruptcy Law And Corporate Insolvency And Restructuring Procedure In Malaysia", *Lex Mundi Conference San Francisco*, September 2003 p.1-21

(Amendment) Act 2017. The Insolvency (Amendment) Act 2020 Which Comes Into Force On 22 October 2020 Has Further Increased Minimum Debt Threshold Value For Bankruptcy Petition From Rm50,000.00 To Rm100,000.00.⁹ This Represents The Fourth Amendment To The Minimum Debt Threshold Since The Act Came Into Force In 1967. The Original Minimum Threshold Was Rm2,000.00. The Minimum Threshold Has Increased To Rm10,000.00 In 1992 And Then Rm30,000.00 In 2003. After That The Threshold Has Increased To Rm50,000.00 In 2017 Which Is Enforced On 6 October 2017.¹⁰

The Malaysia Insolvency Act 1967 Provides Legal Mechanisms To Address The Collective Satisfaction Of The Outstanding Claims From The Individual Debtor's Assets Once The Debtor Is Being Unable To Pay Debts As They Fall Due. The Following Steps Such Are Follows:

(i) Filing Of Bankruptcy Notice

The Creditor Can Choose To File A Bankruptcy Notice Against The Debtor In The High Court If The Amount Of The Debt Is More Than Rm100,000.00. Should The Amount Of The Debt Is Below Than Rm100,000.00, He Can Proceed With Other Modes Of Executions.

(ii) Service Of Bankruptcy Notice

There Are Two Methods To Serve A Bankruptcy Notice On The Debtor. Firstly, The Creditor Serves The Bankruptcy Notice By Way Of Personal Service. The Creditor Tries Two Times To Serve The Bankruptcy Notice Personally To The Debtor. The Third Time Is By Way Of An Appointment. If These Three Attempts Unsuccessful, Then The Creditor Can Apply To The Court To Serve The Bankruptcy Notice By Way Of Substituted Service. Upon The Court Grants The Order, The Creditor Can Proceed To Serve The Bankruptcy Notice By Substituted Service. There Are Three Methods In Substituted Service. Firstly, By Any Means Court Think Fit. Usually By Posting The Bankruptcy Notice At Judgment Debtor Last Known Address. Secondly, Posting The Bankruptcy Notice At The Notice Board Of High Court In Which The Bankruptcy Notice Was Filed And Lastly Advertise The Bankruptcy Notice In A Local Newspaper.

(iii) Filing Of Creditor's Petition And Bankruptcy Order

If The Judgment Debtor Still Fails To Pay The Debts Within 7 Days Of Service Of Bankruptcy Notice, The Debtor Is Considered As Committing An Act Of Bankruptcy. The Creditor Can Proceed To File Creditor Petition Within 6 Months From The Act Of Bankruptcy.¹¹ The Service Of Creditor Petition Is Similar With The Service Of Bankruptcy Notice By Personal Service And Substituted Service. Lastly The Creditor Petition Hearing Date Is Fixed By The High Court. If The Cause Papers Are In Order, Then The Bankruptcy Order Is Recorded Against The Judgement Debtor. The Debtor Becomes Bankrupt Upon The Pronouncement Of The Bankruptcy Order By The Court.

Singapore

⁹ <https://www.parlimen.gov.my.my/files/hindex/pdf/DR-25082020.pdf>., accessed 29 December 2020.

¹⁰ Christopher and Lee Ong, "Amendment to Insolvency Act 1967 to Mitigate Financial Ramifications of COVID-19 and Provide Individuals with Additional Protection From Bankruptcy", https://www.christopherleeong.com/media/4076/insolvency_bill_2020.pdf, accessed 29 December 2020.

¹¹ Section 5(1)(c) of the Insolvency Act 1967

The Legal Measures Introduced By The Government Of Singapore Are Compressed In The Covid-19 (Temporary Measures) Act 2020 (The 'Covid-19 Act'). The Debt Threshold For Personal Bankruptcy Is Increased From S\$15,000 To S\$60,000 And The Debt Threshold For Corporate Insolvency Is Increased From S\$10,000 To S\$100,000. The Period For Demands From Creditors Before The Business Or Individual Is Presumed Insolvent Has Been Extended From 21 Days To Six Months.¹² Furthermore, Singapore's New Insolvency Legislation There Is Insolvency, Restructuring And Dissolution Act Comes Into Force On 30 July 2020.¹³ This Act Consolidates The Bankruptcy Act And Companies Act By Creating A Single Omnibus Act Which Governs Personal And Corporate Insolvency In Singapore.

Australia

The Parliament Of Australia Passed The Covid-19 Economic Response Package Omnibus Act No. 22 Of 2020 Which Is Designed To Provide An Economic Response To The Effect On Australia. The Australia Bankruptcy Proceedings Being Increased From Aud\$5,000 To Aud\$20,000 During Covid-19 Pandemic. The Temporary Amendments Commences On 24 March 2020 ("Commencement Date") And If Applicable Apply To Statutory Demands Served And Bankruptcy Notices Issued On Or After The Commencement Date.¹⁴

The Amendments Provide Debtors More Time To Respond To A Bankruptcy Notice. The Period Is Extended From 21 Days To 6 Months. The Time Frame In Which A Debtor Is Protected From Enforcement Action By A Creditor Following Presentation Of A Declaration Of Intention To Present A Debtor's Petition Where The Period Is Extended From 21 Days To 6 Months. The Creditor Issue A Statutory Demand To A Debtor From \$2,000 To \$20,000. This Raise The Thresholds For Creditor Demands That Can Push Businesses Into Insolvency. The Amendment Also Provide Debtors More Time To Respond To A Statutory Demand. The Period Is Extended From 21 Days To 6 Months.¹⁵

4. COMPARISON BETWEEN INSOLVENCY (AMENDMENT) ACT 2020 AND COVID-19 ACT 2020

Malaysia

(i) Increasing Minimum Debt Threshold

Both Clause 2(A) Of The Insolvency (Amendment) Act 2020 And Clause 20 Of The Covid-19 Act 2020 Seeks To Amend The Insolvency Act 1967 By Increasing The Minimum Debt Threshold For The Presentation Of A Bankruptcy Petition From Rm50,000.00 To Rm100,000.00.

(ii) Discretionary Power Of Minister

Clause 2(B) Of The Insolvency (Amendment) Act 2020 Grants The Minister The Discretion To Further Amend The Minimum Debt Threshold For A Specific Time Period, Provided That:

(A) There Are Special Circumstances; And

¹² Clause 20 of Singapore COVID-19 (Temporary Measures) Act 2020

¹³ Rajah and Tann Asia, "Insolvency, Restructuring and Dissolution Act to Come Into Operation On 30 July 2020" < www.rajahtannasia.com>, accessed 29 December 2020.

¹⁴ Ly Hoang and Vincent Young, "Australia : Temporary Amendments To Australian Insolvency Laws Due To Coronavirus Effective Today", (8 April 2020)>, accessed 29 December 2020.

¹⁵ Lyle Abel and Sally Barber, "Economic Measures to Combat COVID-19 in Australia", 21 April 2020. www.twobirds.com/en/news/articles/2020/Australia/economic-measures-to-combat-covid-19-in-australia, accessed 29 December 2020.

(B) It Would Not Be Contrary To Public Interest To Do So.

While According To Clause 9 Of The Covid-19 Act 2020, The Minister May Issue A Gazette Notice To Further Extend The Operation Of This Modification Until 31 August 2021. It Was Contended That Any Exercise Of The Discretion Of The Minister, Under Clause 2(B) Of The Insolvency (Amendment) Act 2020 To Further Amend The Minimum Debt Threshold, Between The Date Of Publication Of The Covid-19 Act Until 31 August 2021, Would, In Order To Prevent Any Inconsistency, Require A Corresponding Amendment To Effect A Change To The Minimum Debt Threshold Under The Covid-19 Act.

(iii) Saving Provision For Pending Bankruptcy Petitions

Clause 3 Of The Insolvency (Amendment) Act 2020 Provides That Only Bankruptcy Petitions Which Are Presented And Are Still Pending Before The Insolvency Act Is Enacted And Comes Into Force Shall Continue As If The Act Has Not Been Amended By The Insolvency (Amendment) Act 2020. After The Date Of Act Comes Into Force On 22 October 2020, Any Judgment Debt Below Rm100,000.00 Cannot Be The Basis Of A Bankruptcy Action.

Similarly, Section 21 Of Covid-19 Act 2020 States “Any Proceedings, Actions Or Other Matters Required To Be Done Under The Insolvency Act 1967 Which Are Still Pending Immediately Before The Date Of Publication Of This Act Shall Be Dealt With Under The Insolvency Act As If The Insolvency Act 1967 Has Not Been Modified By This Act”. This Encourages Creditors To Commence Bankruptcy Proceedings Against Debtors Before This Act Comes Into Force.¹⁶

(iv) Temporary Or Permanent Relief?

Clause 19 Of The Covid-19 Act 2020 Only Seeks A Temporary Increment To The Minimum Debt Threshold From The Date Of Publication Of The Covid-19 Act 2020 I.E From 23 October 2020 Until 31 August 2021. On The Contrary, The Increment Introduced By Clause 2 Of The Insolvency (Amendment) Act 2020 Is Not Subjected To Any Specific Time Frame.

5. THE EFFECTS OF THE AMENDMENT OF INSOLVENCY ACT 1967 IN MALAYSIA DURING COVID-19

Prior To The Amendment Of Section 5 (1) (A) Of The Insolvency Act 1967, The Minimum Amount Of Debts Owing For Commencement Of Bankruptcy Proceeding Is Rm50,000.00. After The Insolvency (Amendment) Act 2020 Was Enforced On 22 October 2020, The Minimum Amount Of The Insolvency Act 1967 Have Been Increased To Rm100,000.00.¹⁷

The Amendment Provides Protection To The Debtor From The Bankruptcy Proceeding If The Amount Owing Is Less Than Rm100,000.00. The Creditor Is Not Entitled To File The Creditor Petition Against The Debtor Whose Debts Amounting To Rm50,000.00 But Below Than Rm100,000.00. Impliedly, Extension Of Time Given Which Enable The Debtor To Settle His Outstanding Debt With The Creditor. Should The Creditor Wishes To Proceed With An Execution Proceeding Against The Debtor Whose Debt Is Below Rm100,000.00, The Creditor Should Continue With Other Modes Of Enforcement Such As Writ Of Seizure And Sale, Garnishee Proceeding Or Judgment Debtor Summons.

¹⁶Ong Kian Ming, “MP SPEAKS Covid-19 relief bill is too little, too late”, <<https://www.malaysiakini.com/news/538595>>, accessed 29 December 2020.

¹⁷Insolvency (Amendment) Act 2020 [ACT A1624].www.federalgazette.agc.gov.my, accessed 29 December 2020.

The Amendment Causes Negative Effects Particularly To The Creditors. Many Businesses Were Shut Down And Suffer Losses During Covid-19 Crisis. This Crisis Causes The Economic Downturn. It Is Evident That The Creditors Themselves May Be Facing Financial Difficulties And Pressures From Their Own Creditors. Therefore, The Debt Recovery Is Significant For Them. However, By Virtue Of The Insolvency (Amendment) Act 2020, The Creditor Is Now Prevented From Recovering His Debt By Way Of Bankruptcy Proceedings Should The Amount Of The Debt Is Less Than Rm100,00.00. Consequently, Debt Recovery Proceeding Against The Debtor Are Now More Stringent. It Causes Injustice To The Creditors.

6. THE AMENDMENT OF INSOLVENCY LAWS BY OTHER COUNTRIES DURING COVID-19 PANDEMIC

Singapore

The Legal Measures Introduced By The Government Of Singapore Are Compressed In The Covid-19 (Temporary Measures) Act 2020 (The 'Covid-19 Act'). The Debt Threshold For Personal Bankruptcy Is Increased From S\$15,000 To S\$60,000 And The Debt Threshold For Corporate Insolvency Is Increased From S\$10,000 To S\$100,000. The Period For Demands From Creditors Before The Business Or Individual Is Presumed Insolvent Has Been Extended From 21 Days To Six Months.¹⁸ Singapore's New Insolvency Legislation There Is Insolvency, Restructuring And Dissolution Act Comes Into Force On 30 July 2020.¹⁹ This Act Consolidates The Bankruptcy Act And Companies Act By Creating A Single Omnibus Act Which Governs Personal And Corporate Insolvency In Singapore. Thus, It Is Difficult For Individuals To Be Declared Bankrupt Or Businesses To Be Declared Insolvent.²⁰

Australia

The Parliament Of Australia Passed The Covid-19 Economic Response Package Omnibus Act No. 22 Of 2020 Which Is Designed To Provide An Economic Respond To The Effect On Australia. The Australia Bankruptcy Proceedings Being Increased From Aud\$5,000 To Aud\$20,000 During Covid-19 Pandemic. The Temporary Amendments Commences On 24 March 2020 ("Commencement Date") And If Applicable Apply To Statutory Demands Served And Bankruptcy Notices Issued On Or After The Commencement Date.²¹

The Amendments Provide Debtors More Time To Respond To A Bankruptcy Notice. The Period Is Extended From 21 Days To 6 Months. The Time Frame In Which A Debtor Is Protected From Enforcement Action By A Creditor Following Presentation Of A Declaration Of Intention To Present A Debtor's Petition Where The Period Is Extended From 21 Days To 6 Months. The Creditor Issue A Statutory Demand To A Debtor From \$2,000 To \$20,000. This Raise The Thresholds For Creditor Demands That Can Push Businesses Into Insolvency. The Amendment Also Provide Debtors More Time To Respond To A Statutory Demand. The Period Is Extended From 21 Days To 6 Months.²² These Measures Will Now Be In Effect Without Modification Until 31 December 2020.²³

¹⁸ Clause 20 of Singapore COVID-19 (Temporary Measures) Act 2020

¹⁹ Rajah and Tann Asia, "Insolvency, Restructuring and Dissolution Act to Come Into Operation On 30 July 2020" < www.rajahtannasia.com>, accessed 29 December 2020.

²⁰ https://iica.nic.in/images/Impact_of_Covid-19_on_Global_Insolvency_Regimes.pdf> accessed 30 December 2020

²¹ Ly Hoang and Vincent Young, "Australia : Temporary Amendments To Australian Insolvency Laws Due To Coronavirus Effective Today", (8 April 2020)>, accessed 29 December 2020.

²² Lyle Abel and Sally Barber, "Economic Measures to Combat COVID-19 in Australia", 21 April 2020. www.twobirds.com/en/news/articles/2020/Australia/economic-measures-to-combat-covid-19-in-australia, accessed 30 December 2020.

²³ <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/continuation-of-temporary-insolvency-measures-through-2021-australian-response-to-the-covid-19-coronavirus-pandemic>> accessed 30 December 2020

7. ANALYSIS OF THE INSOLVENCY ACT 1967 AND THE INSOLVENCY (AMENDMENT) ACT 2020

(i) **Threshold Of Rm100,000.00**

The Insolvency (Amendment) Act 2020 Increases The Total Indebtedness Of Rm100,000.00 For The Creditors To Initiate The Creditor's Petition Against The Debtor In Accordance With Section 5(1) (A) Of The Insolvency Act 1967. It Is Undeniable That This Amendment Has Come In Hour Of Need. This Increased Threshold Is Expected To Significantly Reduce The Number Of Bankruptcy Cases In This Economic Climate.²⁴ Similarly, According To Datuk Takiyuddin Hassan, The Minister In The Prime Minister's Department, The Amendment Allows Individuals The Chance To Strengthen Their Current Economy Without Constraints Arising From Bankruptcy Actions And To Boost Economic Growth And National Development.²⁵ It Also Gives An Opportunity To Individuals To Manage Their Finances Diligently, Especially After Facing Unexpected Situations Like Covid-19 As Well As Avoiding The Sudden Increase In Bankruptcy Cases In A Short Time. The Increased Of Threshold Will Decrease The Bankruptcy Cases And The Debtor Has The Opportunity To Pay The Debt To The Creditor During Covid-19.²⁶

(ii) **Time Frame For Compliance Of Bankruptcy Notice.**

It Is Pertinent To Highlight That The Insolvency (Amendment) Act 2020 Is Silent On The Time Frame For Compliance Of Bankruptcy Notice. Section 3 (1) (I) Of The Insolvency Act 1967 Requires The Debtor To Settle Total Outstanding Of The Debt Within 7 Days After He Receives The Bankruptcy Notice From The Creditor. If The Debtor Wishes To Oppose The Bankruptcy Notice, He Must Satisfy The Court That He Has A Counter Claim, Cross Demand Or Set Off Against The Creditor Within 7 Days Of The Service Of Bankruptcy Notice. If The Debtors Fail To Do So, The Debtor Is Said To Commit An Act Of Bankruptcy After The 7 Days Period Expired. Consequently, The Creditor Shall Have Right To File Creditor's Petition Against The Said Debtor.

The Issue Of An Act Of Bankruptcy Was Discussed In The Case Of **Re Soh Poh Sheng; Ex-Parte Malayan Banking Berhad [2014]**,²⁷ The Court Held That:

“[10] The Principal And Substantive Application Decided By The Registrar (Sar) Is The Application For An Order To Set Aside The Bankruptcy Notice (Bn). Upon Service Of The Bn On The Jd By Substituted Service ('Ss') Pursuant To An Order Of Ss: The Jd Failed To Oppose The Bn In Accordance With The Procedure Laid Down In Rules 94 And 95, Bankruptcy Rules (Br) More Importantly, He Had Not Shown That He Had A Counter-Claim, Set Off Or Cross-Claim Against The Judgment Debt As Required Under S. 3 (1), Bankruptcy Act (Ba) With The Prescribed Time. As Such, He Had Committed An Act Of Bankruptcy Before Moving The Court To Set Aside The Bn”.

²⁴ Salim Bashir, President Malaysian Bar, “Malaysian Bar is pleased With The Passing Of The Covid-19 Bill 2020 And Is Ready To Provide Input To The Independent Police Conduct Commission Bill 2020”, 2020>, accessed 29 December 2020.

²⁵ Malay Mail, “Insolvency (Amendment) Bill 2020 approved, bankruptcy threshold now RM100,000” <<https://www.malaymail.com/news/malaysia/2020/08/25/insolvency-amendment-bill-2020-approved->>, accessed 29 December 2020.

²⁶ Ibid

²⁷ 1 LNS 1431

It is unfortunate that the Insolvency (Amendment) Act 2020 is silent on the amendment of the existing 7 days' timeline for compliance of bankruptcy notice once the same has been served on the debtor. As a result, the debtor is considered as committing an act of bankruptcy on the 8 days after the service of bankruptcy notice. On the contrary, Singapore and Australia have extended the timeline for compliance of bankruptcy notice to 6 months.²⁸ Thus, the act of bankruptcy is committed after lapse of 6 months period. It shows the inadequacy of the Insolvency (Amendment) Act 2020 to cater the impacts of current COVID-19 pandemic to personal insolvency in Malaysia. It seems that the amendment is passed in haste without reflecting the suffering faced by people in the present economic downturn. This study suggests that existing 7 days' timeline should be amended. Thus, the period of 6 months should be given to the debtor to comply with the bankruptcy notice. The extension of timeline for period of compliance will enable the debtor to recover financially in order to pay his debt. Furthermore, the debtors should be given more time to respond to a bankruptcy notice in difficult times especially during COVID-19 crisis.²⁹ In a nutshell, Malaysian government should follow steps taken Australia and Singapore by extending the time frame for the debtors to respond to bankruptcy notice which was served on him.

(iii) Life Span Of Bankruptcy Notice

The Rule 94 of the Insolvency Rules 2017 states that:

“Subject to the power of court to extend of time a bankruptcy notice shall be served within three months from the issue of the bankruptcy notice.”

The word “shall” denotes mandatory. The life span of bankruptcy notice is three months calculated from the date of issue of the bankruptcy notice. Therefore, the bankruptcy notice must be served on the debtor within the time limit of three months by way of personal service³⁰ or substituted service.³¹ The time limit of three months may be extended by an application to the court.

In the case of **Gatti v Shoosmith [1939]**³² it appears that the court decided to grant an extension of time because of the relevant factors. Firstly, the delay in service was only a matter of a few days. Secondly, the delay was as a result of a misunderstanding of the rules which anyone who was reading the rule without having the authorities in mind. Thirdly, the appellant's solicitor did within time notified the respondent's solicitors by the letter of the appellant's intention to appeal.

This study also investigates the practise of the High Court of Malaya in granting extension of time of bankruptcy notice. It is pertinent to highlight that there is no specific practise direction from the High Court of Malaya to standardize the second extension of time of bankruptcy notice. Consequently, divergent practises exist. For instance, the High Court in Wilayah Persekutuan Kuala

²⁸ Lavinia Kumaraendran and Avinash Kamalanathan, “Malaysia's Temporary COVID-19 Bill 2020 (A Personal Insolvency Perspective) 15 August 2020, www.thomasphilip.com.my, accessed 29 December 2020.

²⁹ Nimalan Devaraja and Janice Ooi, “Covid-19 : Proposed Interim Reliefs For Financially Distressed Companies And Individuals ?”, <Skrine-mondaq.com>, accessed 29 December 2020.

³⁰ Rule 94 and Rule 108 of the Insolvency Rules 2017

³¹ Rule 109 of the Insolvency Rules 2017

³² 3 ALL ER 916

Lumpur³³, Perlis³⁴, Kelantan³⁵, Johor³⁶ Granted 1 Month For Second Extension Of Time Of Bankruptcy Notice. On The Contrary, Shah Alam, Selangor High Court³⁷, Terengganu High Court³⁸ And Seremban, Negeri Sembilan High Court³⁹ Granted 2 Months For Second Extension Of Time. While Melaka High Court⁴⁰, Pahang⁴¹, Alor Setar Kedah⁴², Perak⁴³, Penang⁴⁴ And Sabah And Sarawak High Court⁴⁵ Granted 3 Months For Second Extension Of Time Of Bankruptcy Notice. It Is Pertinent To Highlight That The Second Extension Of Time Of Bankruptcy Notice Is Also Different Between The High Courts In Peninsular Malaysia As Well As In Sabah And Sarawak. The Extension Of Time Given By The Officers Of Respective Courts Based On Circumstances Of The Facts Of The Application For Extension Of Time. It Depends On Discretion Of The Court Either To Grant 1 Month Or 2 Months Or 3 Months For Second Extension Of Time Of Bankruptcy Notice Based On The Reasonable Ground In The Application.

During Covid-19 Crisis, It Is So Challenging To Serve The Bankruptcy Notice Within Three Months Of The Issue Of The Bankruptcy Notice Due To Conditional Movement Control Order And Physical Distancing. Furthermore, Divergent Practices Between The Courts In Granting Second Extension Of Time Would Further Complicate The Bankruptcy Process. Thus, It Is More Pragmatic If The Life Span Of The Bankruptcy Notice Is Extended From 3 Months To 6 Months Or 12 Months For The Creditor To Serve The Bankruptcy Notice. As A Result, Second Extension Of Time Application Would Become Unnecessary.

(iv) Service Of Bankruptcy Notice

Bankruptcy Notice Shall Be Served Personally On The Debtor.⁴⁶ The Service Is Effected By Leaving The Debtor A Sealed Copy Of The Bankruptcy Notice After The Server Satisfied Himself That The Person To Be Served Is The Debtor Himself. If The Debtor Refused To Accept The Bankruptcy Notice,

³³ Interview through *whatsApp* with Deputy Registrar, (Bankruptcy Unit, Kuala Lumpur High Court, Malaysia on 30 October 2020).

³⁴ Interview through *whatsApp* with Deputy Registrar, (Bankruptcy Unit, Kangar, Perlis High Court, Malaysia on 30 October 2020).

³⁵ Interview through *whatsApp* with Senior Assistant Registrar, (Bankruptcy Unit, Kota Bharu, High Court, Malaysia on 1 November 2020).

³⁶ Interview through *whatsApp* with Deputy Registrar, (Bankruptcy Unit, Johor High Court, Malaysia on 30 October 2020).

³⁷ Interview through *whatsApp* with Senior Assistant Registrar, (Bankruptcy Unit, Shah Alam, Selangor High Court, Malaysia on 30 October 2020).

³⁸ Interview through *whatsApp* with Senior Assistant Registrar, (Bankruptcy Unit, Terengganu High Court, Malaysia on 1 November 2020).

³⁹ Interview through *whatsApp* with Senior Assistant Registrar, (Bankruptcy Unit, Seremban, Negeri Sembilan High Court, Malaysia on 2 November 2020).

⁴⁰ Interview through *whatsApp* with Deputy Registrar, (Bankruptcy Unit, Melaka High Court, Malaysia on 30 October 2020).

⁴¹ Interview through *whatsApp* with Senior Assistant Registrar, (Bankruptcy Unit, Temerloh, Pahang High Court, Malaysia on 30 October 2020).

⁴² Interview through *whatsApp* with Senior Assistant Registrar, (Bankruptcy Unit, Alor Setar, Kedah High Court, Malaysia on 1 November 2020).

⁴³ Interview through *whatsApp* with Senior Assistant Registrar, (Bankruptcy Unit, Ipoh Perak High Court and Taiping, Perak High Court, Malaysia on 30 October 2020).

⁴⁴ Interview through *whatsApp* with Senior Assistant Registrar, (Bankruptcy Unit, Penang High Court, Malaysia on 2 November 2020).

⁴⁵ Interview through *whatsApp* with Registrar, (Sabah and Sarawak High Court, Malaysia on 30 October 2020).

⁴⁶ Rule 94 and Rule 108 of the Insolvency Rules 2017

It May Be Left At A Place Close To The Debtor After Informing Him Of The Nature Of The Document. Service Of The Bankruptcy Notice On The Debtor's Spouse Is Not Effective Service On The Debtor.

It Is Pertinent To Note That The Creditor Can Only Proceed With Service Of Bankruptcy Notice By Way Of Substituted Service After His Attempt For Personal Service Fails. The Creditors Should Try To Serve Personally On The Debtor At Least Twice. His Third Attempt Should Be Accompanied With Letter Of Appointment Prior To The Personal Service. After All The Attempts Ineffective, The Creditor May Proceed To File An Application To Serve Bankruptcy Notice By Way Of Substituted Service. After The Court Satisfied That Personal Service Cannot Be Effected, The Court May Order For Substituted Service.⁴⁷

There Are Three Modes Of Substituted Service Which Are As Follows:

- a) Advertisement In A Local Newspaper;
- b) Placing The Bankruptcy Notice Of The Court Premises; And
- c) Other Means That The Court Thinks Fit And Just (Usually Posting At Last Known Address Of The Debtor).

The Meaning Of "Any Other Means That The Court Think Fit" Is Not Exhaustive. Thus, The Court Can Order The Creditor To Serve The Bankruptcy Notice By Any Means Necessary And That The Court Thinks Fit To Bring The Notice To The Attention Of The Person To Be Served. This May Include Using Electronic Services Such Are Telegram, Facebook, Whatsapp, Twitter Or Digital Which Are Acceptable And Applicable Under The Law.

The Importance Of The Use Of Electronic Services Is Well Illustrated In **Affin Bank Bhd V Major Galaxy Sdn Bhd & Ors [2009]**⁴⁸, The Court Held That :

"Bearing In Mind That The Whole Purpose Of The Need For Service Of Process Upon The Opposite Party Is To Ensure That He Is Aware Of The Process Or Proceedings Against Him, And As We Have Now Arrived At The Era Of Communication And Transactions Through The Electronic Media, For Example Email, Facsimile, Multimedia Messaging Services. E-Syariah, And Video Conferencing, It Is, In My Opinion, High Time That We Heed The Prescient Exhortation Of The Supreme Court In Koh Thong Chuan That Practise Note No. 1 Of 1968 "Should Not Be Applied Blindly But Mutatis Mutandis The Facts Of Each Situation" And Consider An Update Of This Practise Note".

Obviously, This Mode Of Service By Electronic Device Is One Of The Modes For Substituted Service. However, Substituted Service Can Only Be Commenced After The Personal Service Proves To Be Ineffective. Therefore, The Amendment Of The Insolvency Act 1967 To Include Service Of The Cause Papers By Way Of Electronic Media As An Alternative Of Personal Service Is Essential During This Covid-19 Pandemic.

(v) **Time Of Filing Creditor's Petition**

Section 5(1)(C) Of The Insolvency Act 1967 Mandates The Creditor To File The Creditor Petition Within 6 Months From The Act Of Bankruptcy. After The Hearing Of The Creditor's Petition And All

⁴⁷ Ibid

⁴⁸ 5 CLJ 73 see also Re S Nirmala A/P Muthiah Selvarajah T/A Shamin Properties; Ex-Parte The New Straits Times Press (Malaysia) Bhd [1988] 2 MLJ 616

The Cause Papers Are In Order, The Court May Subsequently Grants The Bankruptcy Order Against The Debtor. The Debtor Becomes Bankrupt After The Pronouncement Of The Order.

Due To Covid-19 Crisis, It Is Suggested That The Time Frame Of 6 Months To File Creditor's Petition Is Amended To 9 Or 12 Months So That The Debtors Will Have Sufficient Time To Negotiate With The Financial Institution To Pay Their Debts.

8. FINDING

The Finding Reveals That The Amendment Of The Insolvency Act 1967 Is Timely To Recover The Economy, Reducing The Impact Of Covid-19 Among The People And Avoid Massive Increase In Bankruptcy Cases. The Amendment Also Provides Benefit To Every Individual Affected In Personal Insolvency. This Research Also Finds Legal Issues And Problems Which Require Legal Reform. The Existing Time Frame Given In The Insolvency Act 1967 Which Is Not Adequate To Cater Personal Insolvency Amidst Covid-19 Crisis Are Summarised As Follows:

- (i) Time Frame Of 7 Days For Compliance Of Bankruptcy Notice (Section 3(1)(I) Of The Insolvency Act 1967).
- (ii) Life Span For Bankruptcy Notice Of 3 Months (Rule 94 Of The Insolvency Rules 2017).
- (iii) Time Of Filing Creditor's Petition I.E Within 6 Months After The Act Of Bankruptcy Committed (Section 5(1)(C) Of The Insolvency Act 1967).

9. CONCLUSION AND RECOMMENDATION

The Amendment Of The Insolvency Act 1967 For Instance Insolvency (Amendment) 2020 Act Amidst Covid-19 To Personal Insolvency In Malaysia Provides Individuals With Additional Protection From The Threat Of Bankruptcy. It Plays A Significant Role To Avoid Massive Increase In Bankruptcy Cases. It Reveals Both Positive And Negative Impacts To The Debtors And Creditors. During This Covid-19 Pandemic, The Debtors Should Be Given Opportunity To Find The Solution To Pay Their Debts In A Reasonable Time. The Creditors Should Not Be Deprived Of Their Right To Recover Their Debt By Commencing Bankruptcy Proceeding Sometimes In Tandem With Other Modes Of Enforcement. This Study Also Finds Legal Issues And Problems Which Require Legal Reform. Thus, This Study Proposes For Further Amendment Of Insolvency Act 1967. Firstly, Rule 94 Of The Insolvency Rules 2017 Where Life Span Of Bankruptcy Notice 3 Months Is To Be Extended To 6 Months Or 12 Months. The Reason Is That Creditor Should Be Given Sufficient Time To Serve The Said Notice To The Debtors During Covid-19 Pandemic. Secondly, Time Frame Of 7 Days For Compliance Of Bankruptcy Notice Should Also Be Extended To 6 Months So The Debtor Is Given Opportunity To Settle The Debt With His Creditor. The Extension Of Time For Filing Creditor's Petition Is Amended To "Within 12 Months After The Act Of Bankruptcy Committed". Lastly, Service Of Bankruptcy Notice By Electronic Devices Should Be Incorporated In The Act As An Alternative To Personal Service. Therefore, The Comparative Study Of Insolvency Law Between Malaysia, Singapore And Australia Is Important During Pandemic Covid-19 To Ensure The Effectiveness Of Implementation Of Covid-19 Act.

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